

1 BRYAN WILSON (BAR NO.138842)
2 BWilson@mofo.com
3 KENNETH A. KUWAYTI (BAR NO. 145384)
4 KKuwayti@mofo.com
5 STEFAN J. SZPAJDA (BAR NO. 282322)
6 SSzpjda@mofo.com
7 MORRISON & FOERSTER LLP
8 755 Page Mill Road
9 Palo Alto, California 94304-1018
Telephone: 650.813.5600
Facsimile: 650.494.0792

7 Attorneys for Defendants
8 VERIO INC., NTT AMERICA, INC.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SILICON VALLEY TELECOM EXCHANGE,
LLC, a California corporation,

Plaintiffs,

v.

VERIO INC., a Delaware corporation; NTT
AMERICA, INC., a Delaware corporation; and
DOES 1 through 25,

Defendants.

Case No. 12-CV-00899 HRL

**DECLARATION OF STEFAN J.
SZPAJDA IN SUPPORT OF
VERIO INC. AND NTT
AMERICA, INC.'S MOTION TO
DISMISS PURSUANT TO
SETTLEMENT**

Date: October 22, 2013
Time: 10:00 am
Courtroom: 2, 5th Floor
Judge: Hon. Howard R. Lloyd

1 I, Stefan J. Szpajda, hereby declare as follows:

2 1. I am an associate of Morrison & Foerster LLP, counsel for defendants Verio Inc.
3 (“Verio”) and NTT America, Inc. (“NTTA”). I make this declaration in support of Verio and
4 NTTA’s Motion to Dismiss Pursuant to Settlement. I have personal knowledge of the facts stated
5 herein and, if called as a witness, could and would testify competently thereto.

6 2. On September 9, 2013 Verio and NTTA delivered a check to Ed Cullen on behalf
7 of Silicon Valley Telecom Exchange, LLC (“SVTX”), in the amount of \$225,000.00, as set out in
8 the terms of the settlement.

9 3. On August 28, 2013, the parties to this case attended a settlement conference with
10 Magistrate Judge Grewal. The settlement conference began at 9:00 a.m. and concluded around
11 6:30 p.m. The case was settled, and the terms were put on the record. Attached hereto as Exhibit
12 A is a true and correct copy of the Transcript of Proceedings of the Official Electronic Sound
13 Recordings (Dkt No. 88) of the August 28, 2013 Settlement Proceedings.

14 4. Attached hereto as Exhibit B is a true and correct copy of emails dated August 29
15 and August 30, 2013 that I sent to Ed Cullen and Marc Pinckney, attaching a copy of a draft
16 settlement agreement.

17 5. Attached hereto as Exhibit C is a true and correct copy of an email dated
18 September 3, 2013, from Ed Cullen to me, objecting to the draft release language.

19 6. Attached hereto as Exhibit D is a true and correct copy of an email dated
20 September 3, 2013 from me to Mr. Cullen and Marc Pinckney attaching a copy of the revised
21 draft settlement agreement in which the release language was, verbatim, what was recited on the
22 record in Court on August 28.

23 7. Attached hereto as Exhibit E is a true and correct copy of an email dated
24 September 10, 2013 from me to Mr. Pinckney and Mr. Cullen memorializing a telephone call I
25 had with Mr. Pinckney, in which Mr. Pinckney confirmed that SVTX received Verio’s payment,
26 told me that he would send further revised release language, and told me that Mr. Cullen would
27 take care of filing the dismissal.

8. Attached hereto as Exhibit F is a true and correct copy of an email dated September 11, 2013 from Mr. Pinckney to me including SVTX's proposed release language.

9. Attached hereto as Exhibit G is a true and correct copy of an email dated September 11, 2013 from me to Mr. Pinckney and Mr. Cullen in which I proposed that the parties rely on the agreement as stated on the record, and again requested that SVTX dismiss the case.

I declare under penalty of perjury under the laws of the State of California, and of the United States, that the foregoing is true and correct.

Executed this 12th day of September 2013, at Palo Alto, California.

/s/ Stefan J. Szpajda
Stefan J. Szpajda

ATTESTATION

I, Bryan Wilson, am the ECF user whose ID and password are being used to file this Declaration. In compliance with General Order 45.X.B, I hereby attest that Stefan J. Szpajda has concurred in this filing.

Dated: September 12, 2013

MORRISON & FOERSTER LLP

By: /s/ Bryan Wilson
BRYAN WILSON

Attorneys for Defendants